CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	Force	☐ Discourt.	U.S.
Ben Gilmore		Squad #9	201509727	☑ Abuse	O.L.	☐ Injury
Incident Date(s)		Location of Incident:		Precinct:	18 Mo. SOL	EO SOL
Friday, 11/13/2015 10:30 AM		West 5th Street and Su	rf Avenue	60	5/13/2017	5/13/2017
Date/Time CV Reported		CV Reported At:	How CV Reported:	Date/Time	Received at CCI	RB
Mon, 11/16/2015 7:59 AM		CCRB	Phone	Mon, 11/1	6/2015 7:59 AM	I
Complainant/Victim	Type	Home Addre	ess			
Witness(es)		Home Addre	ess			
Subject Officer(s)	Shield	TaxID	Command			
1. POM Jonathan Mckiski	14969	951990	060 PCT			
2. POF Alena Aminova	12222	946745	60 PCT			
Officer(s)	Allegati	on		Inve	estigator Recon	nmendation
A.POM Jonathan Mckiski	Abuse: PO Jonathan Mckiski stopped § 87(2)(b)					
B.POF Alena Aminova	Abuse: PO Alena Aminova stopped § 87(2)(b)					
C.POF Alena Aminova	Abuse: PO Alena Aminova searched § 87(2)(b)					
D.POF Alena Aminova	Abuse: PO Alena Aminova searched the backpack of \$87(2)(b)					
E.POF Alena Aminova	Abuse: PO Alena Aminova threatened to arrest 887(2)(b)					
F.POM Jonathan Mckiski	Abuse: PO Jonathan Mckiski issued a summons to §87(2)(b)					

Case Summary

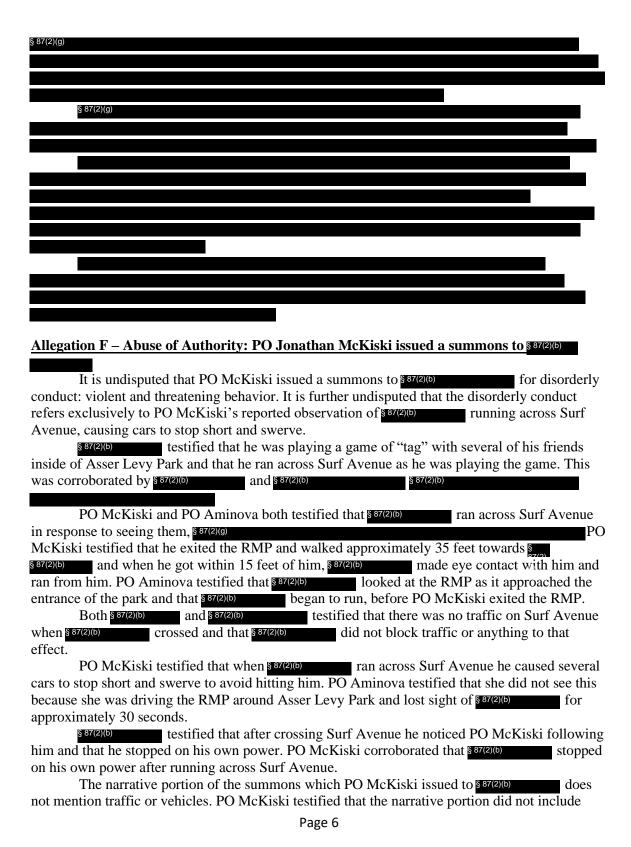
behalf of her \$87(2)(b) old son, \$87(2)(b) did not witness the incident, and there is no video footage of this incident.
On November 13, 2015, at approximately 10:16 a.m. the 63 rd Precinct Detective Squad made a call over the radio that they were looking for a perpetrator of a robbery which had occurred on a prior date, and that it was not a gun run (Board Review 01). The 63 rd Precinct Detective Squad indicated that the perpetrator was last seen at \$87(2)(b) in Brooklyn about five minutes prior, but the direction of flight was unknown.
The 63 rd Precinct Detective Squad provided the following description of the wanted perpetrator: a black male, 16 years old, 5'10" tall, wearing a green sweatshirt, and had a sling on his right hand. Central Communications repeated that the 63 rd Precinct Detective Squad was looking for a black male, 5'10" tall, wearing a green sweater, with a sling on his right arm (Board Review 02).
Around this time, \$87(2)(b) walked with a group of three to ten other 887(2)(b) in Brooklyn, a distance of about a \$87(2)(b) old black male who stands between 5'2" and 5'5" tall (based on differing reports), was not wearing a sling or a green sweatshirt.
At approximately 10:26 a.m. PO Alena Aminova and PO Jonathan McKiski, both from the 60 th Precinct, were together in a marked RMP when they observed \$\frac{87(2)(b)}{2}\$ inside of Asser Levy Park and decided to stop him (Allegations A and B). PO McKiski exited the RMP and pursued \$\frac{87(2)(b)}{2}\$ on foot as \$\frac{87(2)(b)}{2}\$ ran across Surf Avenue, near the intersection of Surf Avenue and West 5 th Street. PO Aminova drove the RMP to the intersection of Surf Avenue and West 5 th Street where PO McKiski had \$\frac{87(2)(b)}{2}\$ stopped. PO McKiski placed \$\frac{87(2)(b)}{2}\$ in handcuffs.
PO Aminova searched inside the pockets of \$87(2)(b) clothing (Allegation C). PO Aminova then searched inside \$87(2)(b) backpack (Allegation D). Both searches yielded negative results for any illicit items. \$87(2)(b) alleged that PO Aminova told him that the next time she sees him run away from the police she was going to arrest him (Allegation E). \$87(2)(b) alleged that PO Gabriel Keinig, who was then a NYPD Cadet, made a reference to Ferguson, Missouri which \$87(2)(b) found to be offensive. Because PO Keinig was a cadet during the time of the incident, a spin-off to IAB was generated regarding the alleged offensive language.
Members of the 63 rd Precinct Detective Squad arrived on scene and indicated that \$87(2)(b) was not the wanted perpetrator. PO McKiski issued \$87(2)(b) a summons for disorderly conduct – violent and threatening behavior (Allegation F) (Board Review 03). \$87(2)(b) was not arrested, and he was released from the scene with the aforementioned summons.
This case was originally assigned to Eshwarie Mahadeo. It was reassigned to Investigator Ben Gilmore on December 9, 2015, following Ms. Mahadeo's transfer to the CCRB Outreach Unit.

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	Mediation, Civil and Criminal Histories
•	was offered mediation during his in-person interview with the CCRB on
	November 18, 2015, but §87(2)(b) rejected it, §87(2)(b)
•	[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
•	The New York City Comptroller's Office indicated that neither \$87(2)(b) nor
	filed a Notice of Claim regarding this incident (Board Review 05).
	Civilian and Officer CCRB Histories
•	This is the first complaint \$87(2)(b) has filed with the CCRB (Board Review 06).
•	This is the first CCRB complaint in which §87(2)(b) is involved (Board Review
	07).
•	PO Jonathan McKiski has been a member of service for four years. There are five
	previous CCRB allegations made against him, none of which were substantiated.
•	PO Alena Aminova has been a member of service for seven years. There are seven
	previous CCRB allegations made against her, none of which were substantiated.
	Findings and Decommondations
	Findings and Recommendations
Allegat	tions not pleaded
•	Abuse of Authority: A frisk allegation was not pleaded against PO McKiski. Although
	PO McKiski testified that he frisked §87(2)(b) after stopping him (Board Review
	08), \$87(2)(5) did not allege that PO McKiski frisked him (Board Review 09).
	§ 87(2)(g) .
•	Abuse of Authority: A frisk allegation was not pleaded against PO Aminova. Although
	PO Aminova testified that she frisked \$87(2)(b) before searching him (Board
	Review 10), \$87(2)(b) did not allege that PO Aminova frisked him. \$87(2)(9)
	tion A –Abuse of Authority: PO Jonathan McKiski stopped §87(2)(b)
Allegat	tion B – Abuse of Authority: PO Alena Aminova stopped [S 87(2)(6)]
	It is undisputed that PO McKiski and PO Aminova stopped \$87(2)(b) in the
	of Asser Levy Park in Brooklyn. It is further undisputed that after PO McKiski and PO
	va determined to stop \$87(2)(b) PO McKiski chased \$87(2)(b) on foot across
	venue, eventually stopping \$87(2)(b) on the south side of Surf Avenue. Both PO
	ki and PO Aminova testified that the reason \$87(2)(6) was stopped was because he
matche	d the description of a perpetrator of a robbery.
ъ.	The description of the perpetrator of the robbery was provided via radio by the 63 rd
	et Detective Squad approximately 10 minutes before the stop (Board Review 01). The 63 rd
riecino	et Detective Squad indicated that the wanted perpetrator was last seen at \$87(2)(5)
§ 87(2)(b)	approximately five minutes prior, and that the direction of flight was unknown.
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The description given was for a black male, 16 years old, 5'10" tall, wearing a green sweatshirt, with a sling on his right hand or arm. \$87(2)(b) is a black male who at the time of the incident was \$87(2)(b) old, between 5'2" and 5'5" tall, was wearing a green t-shirt, and was not wearing a sling. PO Aminova described \$87(2)(b) as a approximately her height, 5'2" tall.
New York State ID lists him as 5'4" tall (Board Review 11). During his in-person statement with the CCRB on November 8, 2015, \$87(2)(5) described himself as 5'5" tall (Board Review 12).
The New York State Supreme Court found in <u>People v Riddick</u> , 269 AD2d 471 (2000) that a vague description of a wanted perpetrator is not sufficient basis for a stop of an individual matching the vague description, even if the stop occurred approximately 15 minutes after the alleged crime and in the vicinity of the alleged crime (Board Review 13). [887(2)(9)
Alleredien C. Alexand Anthonian DO Alexandra are annual al Review
Allegation C – Abuse of Authority: PO Alena Aminova searched S87(2)(6)
It is undisputed that \$87(2)(b) was stopped near the intersection of West 5 th Street and Surf Avenue and was handcuffed by PO McKiski. \$87(2)(b) alleged that PO Aminova searched inside the pocket of his gray hooded sweatshirt and then searched his backpack.
PO Aminova testified that immediately upon approaching \$87(2)(b) after he had been handcuffed, she frisked him. PO Aminova testified that she had not spoken to PO McKiski prior to frisking \$87(2)(b) that she could remember. PO Aminova testified that she did not
feel anything which resembled a weapon when she frisked \$87(2)(b) PO Aminova testified that immediately after frisking \$87(2)(b) she searched his pockets. PO Aminova said that she searched \$87(2)(b) pockets "incident to lawful arrest, because [she] thought \$87(2)
was [her] prisoner." PO Aminova testified that after she searched \$87(2)(b) she searched his backpack. PO Aminova said that she searched \$87(2)(b) backpack, "Because was being detained. [PO Aminova] thought this was the prisoner for the
was some actumed. [1 0 1 minova] thought this was the prisoner for the

robbery." PO Aminova indicated that there were no other factors which led her to search
PO McKiski testified that he did not see any officer search \$87(2)(b) or \$27(2)(b) backpack. PO McKiski testified that after PO Aminova arrived in the RMP, he stepped away from the scene to "catch his breath." PO Aminova said that PO McKiski stood right next to her when she frisked \$87(2)(b) and that she then immediately searched and then immediately searched backpack. PO McKiski said that he did not search \$87(2)(b) backpack because, "There was no reason to." It is undisputed that members of the 63rd Precinct Detective Squad responded to the scene and almost immediately indicated that \$87(2)(b) was not the wanted perpetrator for the robbery for whom they had given a description. \$87(2)(b) was not arrested as a result of the incident. \$87(2)(b) was released from the scene with a summons for disorderly conduct. PO Aminova testified that she did not observe the disorderly conduct for which \$87(2)(b) was ultimately summonsed. People v. Reid 24 N.Y.3d 615 (2014) states that a search of an individual "must be"
incident to an actual arrest, not just to probable cause that might have led to an arrest, but did not," (Board Review 14).
§ 87(2)(g)
Allegation E – Abuse of Authority: PO Alena Aminova threatened to arrest 887(2)(b)
alleged that after PO Aminova searched his backpack she told him that she would arrest him if she ever saw him running from the police again. PO Aminova denied telling \$87(2)(b) that she would arrest him if she saw him running from the police (Board Review 20). PO Aminova testified that she told \$87(2)(b) during the incident that if he did not have anything to hide, there was no reason to run. PO McKiski denied hearing PO Aminova threaten to arrest \$87(2)(b) Two civilian witnesses, \$87(2)(b) and \$87(2)(b) testified that they were too far from where \$87(2)(b) was stopped to hear anything that was said to him (Board Review 15 and 16). Police Department v. Seligson OATH Index No. 1621/00 (2000) indicates that a threat of arrest constitutes an abuse of authority if there is no reasonable basis for an arrest and the threat is based on personal pique (Board Review 17). People v. Mims 42 Misc. 3d 1213 (A) indicates that
flight alone does not constitute probable cause for an arrest (Board Review 18).



that § 87(2)(b)	exhibited "tumultuou	us behavior" and was "threa	tion of the summons indicates tening," but PO McKiski eet causing cars to swerve and	
New You conduct when, we	with intent to cause publi hereof, he engages in fig	20(1) indicates that a perso ic inconvenience, annoyance thing or in violent, tumultude	e or alarm, or recklessly	
§ 87(2)(g)				
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Squad:				-
Investigator: _	Signature	Print	Date	
Squad Leader: _	Title/Signature	Print	Date	
Reviewer:	Title/Signature	Print	Date	